

BEFORE THE
TENNESSEE STATE BOARD OF EQUALIZATION

In Re: Albertine McCrory Realty Co.)
 District B1, Block 57X, Parcel C72)
 Residential Property) Shelby County
 Tax year 2006)

INITIAL DECISION AND ORDER

Statement of the Case

The subject property is presently valued for tax purposes as follows:

LAND VALUE	IMPROVEMENT VALUE	TOTAL VALUE	ASSESSMENT
\$29,100	\$0	\$29,100	\$7,275

The property owner has filed an appeal with the State Board of Equalization ("State Board").¹ The property in question was not appealed to the Shelby County Board of Equalization ("county board") during its regular annual session.

The undersigned administrative judge conducted a hearing of this matter on December 14, 2006 in Memphis. Gary Albertine Sr., owner of Albertine McCrory Realty Co., Inc., represented the taxpayer at the hearing. Legal advisor John Zelinka and staff appraiser Ronald Palmer appeared on behalf of the Shelby County Assessor of Property.

After addressing the preliminary issue of whether the State Board has jurisdiction, the administrative judge took that question under advisement and heard testimony concerning the value of the property in question.

Findings of Fact and Conclusions of Law

The 0.73-acre parcel in question lies on the east side of Oak Forest Drive in Bartlett. When Mr. Albertine purchased this land in the mid-1980s, his intention was to develop two separate lots for residential use. But that plan has apparently been foiled by an existing ditch at the rear of the property.

On July 31, 2006, armed with a letter from a professional engineer (Danny B. Tabrizi) stating that this site "would not be feasible for subdivision development," Mr. Albertine met with an Assessor's representative to discuss the possibility of a reduced assessment. By then, unfortunately, the deadline for protesting the valuation of the subject property in tax year 2006 before the county board had passed. Having no other possible recourse, Mr. Albertine initiated this appeal to the State Board.

¹The appellant, a real estate developer, mailed an application for exemption of this property to the State Board on July 31, 2006. Since the appellant obviously did not qualify as an exempt institution, the appeal had to be resubmitted on the proper form.

Tenn. Code Ann. section 67-5-1401 provides (in relevant part) that:

If the taxpayer fails, neglects or refuses to appear before the county board of equalization prior to its final adjournment, the assessment as determined by the assessor shall be conclusive against the taxpayer, and such taxpayer shall be required to pay the taxes on such amount....

However, in 1991, the General Assembly enacted an amendment which affords a taxpayer the opportunity for a hearing before the State Board to demonstrate "reasonable cause" for failure to appeal a property assessment to the local board of equalization within the allotted time. The State Board may accept a direct appeal under this provision up to March 1 of the year following that in which the disputed assessment was made. Tenn. Code Ann. section 67-5-1412(e).

In the case of Associated Pipeline Contractors, Inc. (Williamson County, Tax Year 1992, Final Decision and Order, August 11, 1994), the State Board's Assessment Appeals Commission declared that:

The deadlines and requirements for appeal are clearly set out in the law, and owners of property are charged with knowledge of them. It was not the intent of the "reasonable cause" provisions to waive these requirements except where the failure to meet them is due to **illness or other circumstance beyond the taxpayer's control**...[Emphasis added.]

Id. at pp.2—3.

To date, this has remained the prevailing interpretation of the "reasonable cause" amendment. In light of such precedent, the administrative judge cannot conclude that this appeal is properly before the State Board. Nothing in the record suggests that any "circumstance beyond the taxpayer's control" precluded Mr. Albertine from lodging a timely complaint to the county board. Rather, in his own words, he "should have started all this back in April."

The taxpayer may, of course, pursue any available administrative remedies with respect to the valuation of the subject property for tax year 2007.

Order

It is, therefore, ORDERED that this appeal be dismissed for lack of jurisdiction.

Pursuant to the Uniform Administrative Procedures Act, Tenn. Code Ann. §§ 4-5-301—325, Tenn. Code Ann. § 67-5-1501, and the Rules of Contested Case Procedure of the State Board of Equalization, the parties are advised of the following remedies:

1. A party may appeal this decision and order to the Assessment Appeals Commission pursuant to Tenn. Code Ann. § 67-5-1501 and Rule 0600-1-.12 of the Contested Case Procedures of the State Board of Equalization. Tennessee Code Annotated § 67-5-1501(c) provides that an appeal "**must be filed within**

thirty (30) days from the date the initial decision is sent.” Rule 0600-1-.12 of the Contested Case Procedures of the State Board of Equalization provides that the appeal be filed with the Executive Secretary of the State Board and that the appeal “**identify the allegedly erroneous finding(s) of fact and/or conclusion(s) of law in the initial order**”; or

2. A party may petition for reconsideration of this decision and order pursuant to Tenn. Code Ann. § 4-5-317 within fifteen (15) days of the entry of the order. The petition for reconsideration must state the specific grounds upon which relief is requested. The filing of a petition for reconsideration is not a prerequisite for seeking administrative or judicial review.

This order does not become final until an official certificate is issued by the Assessment Appeals Commission. Official certificates are normally issued seventy-five (75) days after the entry of the initial decision and order if no party has appealed.

ENTERED this 5th day of January, 2007.

Pete Loesch

PETE LOESCH
ADMINISTRATIVE JUDGE
TENNESSEE DEPARTMENT OF STATE
ADMINISTRATIVE PROCEDURES DIVISION

cc: Gary Albertaine, Sr.
Tameaka Stanton-Riley, Appeals Manager, Shelby County Assessor's Office

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